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我国小额诉讼程序具体制度构建
探讨

Study on the Construction of China's
Small Claims Procedure

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内 容 摘 要

无论权利大小，都应当得到有效保护，这是当代法治国家应有的司法理念。近几年来，随着司法便民、诉讼效率理念的推进，简化程序、提高司法效率成为各国司法改革共同追求的目标。小额诉讼程序就是在这样的背景下，以高效、低成本、便捷的特性逐渐显现出其具有的独特价值，为大家所接受。这也是当代司法发展的结果。

本文中，笔者在已有的理论框架下，结合我国现有的立法及实践情况，从内涵、特性等方面对小额诉讼程序的基本理论进行重新审视，分析了小额诉讼程序在我国实践运行过程中存在的问题。同时，在对比域外小额诉讼程序立法例的基础上，对完善我国小额诉讼程序提出一些具体设想。除引言和结语外，全文共四章。

第一章：问题的提出。主要阐述了本文选题的形成过程及意义，并从国内外两个方面介绍了目前小额诉讼程序在理论与实践方面的研究情况。由此，指出了本文研究的重点。

第二章：理论探源：小额诉讼程序理论的新审视。首先，从基本内涵、特性介绍了小额诉讼程序的基本概念，将小额诉讼程序定位在与普通程序、简易程序并列的民事诉讼程序；其次，通过与简易程序比较，介绍了小额诉讼程序的基本价值，得出了小额诉讼程序具有与简易程序不同的独有价值；最后，在结合前两方面的基础上，论述了小额诉讼程序自身所具有的一些缺陷及负面影响，强调了在研究小额诉讼程序时，应正视小额诉讼程序的价值，尤其是其所具有的缺陷及负面影响。

第三章：立法与实践：我国小额诉讼程序的规则解读与实务运行。本章主要立足于我国小额诉讼程序的实践，从现实因素与小额速裁实践经验两个

方面介绍了小额诉讼程序的立法背景，并对我国民事诉讼法中有关小额诉讼程序的立法进行解读。在此基础上，分析了目前我国小额诉讼程序的相关立法规定及实务运行状况，阐述了我国立法确认小额诉讼程序所取得的成效及实务中存在的一些问题。

第四章：制度构建：我国小额诉讼程序具体制度设计。本章主要在结合前三章的基础上，介绍了我国在构建小额诉讼程序具体制度过程中应当注意的问题，并从立法模式、适用条件、审理、程序保障、救济制度、执行制度、小额诉讼程序与其他程序之间的衔接等方面探讨了我国构建小额诉讼程序规则的设想。

关键词：小额纠纷；小额诉讼程序；程序保障

ABSTRACT

Any right, regardless its size, should be effectively protected. This is judicial philosophy which should be taken in the modern country ruled by law. In recent years, with the advancement of judicial convenience and the concept of judicial efficiency, improving judicial efficiency has become the common goal of judicial reform in the world. Small claims procedure, with high efficiency, low cost, and convenience etc. characteristics gradually, shows its unique value and was accepted by everyone in the wave of judicial reform. This is also the result of the development of contemporary judicial.

In this paper, under the existing theoretical framework, the author re-examine the basic theory from the fact and the characteristics of the small claims procedure. This paper also analyzes the possible problems in the small claims procedure in the context of existing legislation and practice. Meanwhile, this paper tries to make assumption to perfect the lawsuit procedure of small claims with the base of the combination of foreign small procedural legislations, In addition to the introduction and conclusion, the thesis consists of four chapters.

The first chapter: issues raised. This paper mainly describes process and significance of this subject, the basic situation of the small claims both in China and foreign countries. In this way, the main content and emphasis have been discussed.

The second chapter: theory research: new perspective theory of small claims procedure. Firstly, it introduces the basic concept and the characteristics of small claims procedure, in such way, the small claims procedure has

determined as in parallel with the ordinary procedure and summary procedure in civil procedure; Secondly, through the comparison with the summary procedure, it introduces the basic value of small claims procedure so as to make a conclusion that the procedure has its unique; Finally, based on the first two aspects, the procedure's shortcomings and negative impacts have been discussed, therefore in the research of procedure, we should exam the small claims procedure's value carefully, especially the negative influence.

The third chapter: legislation and practice: rules analysis and practical operation of China's small claims procedure. Based on the practice of the procedure in China, this chapter mainly introduces the legislative background of small claims procedure from the aspect of both realistic factors and judicial practice so as to make an explanation of the legislation on the small claims procedure in Civil Procedure Law of China. On this basis, the small claims procedure in the practices of legislation and practice in China have been analyses, In such a way, the practice effect and problems of small claims procedure have been concluded.

The fourth chapter: the system construction: concrete system of China's small claims procedure design. Based on the first three chapters, it introduces the specific problems in China which should pay attention to in the process of construction. And also discuss the assumption of China's construction of small claims procedure rules in the view of the legislative model, the applicable conditions, trial, procedural safeguard, adjudication relief, execution system, and the convergence between the small claims procedure and other procedures.

Key words: Small claims disputes; Small claims procedure; Procedural Safeguard

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